

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

The Coca-Cola Company,
McDonald's Corporation,
Pepsico, Inc.,
The Washington Post Company,
and WashingtonPost.Newsweek
Interactive Company, LLC,

Plaintiffs,

v.

William S. Purdy, Sr.,
Please Don't Kill Your Baby,
and Does 1-10,

Defendants.

**AMENDED ORDER FOR
EMERGENCY TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY
INJUNCTION**

Civil No. 02-1782 ADM/AJB

Patrick J. Carome, Esq., and Maya Alexandri, Esq., Wilmer, Cutler and Pickering, Washington, D.C., and Felicia J. Boyd, Esq., Faegre and Benson, Minneapolis, MN, on behalf of Plaintiffs.

William S. Purdy, Sr., *pro se*, on behalf of Defendants.

On July 22, 2002, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 2] was argued before the undersigned United States District Judge. On July 23, 2002, this Court issued an Order for Emergency Temporary Restraining Order and Preliminary Injunction [Doc. No. 12]. An Emergency Appeal was filed by Defendant William S. Purdy, Sr., ("Purdy") [Doc. No. 13], which was denied by the Eighth Circuit [Doc. No. 15]. Subsequently, Plaintiffs' counsel alerted this Court's calendar clerk that Defendant was engaged in activities Plaintiffs believed to be in violation of the Court's July 23 Order. The Calendar Clerk advised Plaintiffs' counsel

to submit a letter expressing these concerns to the Court with a copy to Purdy. After a review of the written arguments, the Court's Law Clerk telephoned Plaintiffs' counsel to instruct that the undersigned Judge would require a formal motion in order to amend the language of the original Order. On August 15, 2002, Plaintiffs filed a Motion for Clarification [Doc. No. 17], and a copy was sent to Purdy. On August 16, 2002, the Court sent a letter to all parties, including Purdy, stating that the motion would "be decided on written submissions; no oral argument will be heard. If Defendants wish to file a memorandum in opposition, it must be filed by Tuesday, August 27, 2002."

The individual Defendant has sent the Court several fax communications complaining of *ex parte* conduct by the Plaintiffs. An order is *ex parte* when it is "made by the court upon the application of one party to an action without notice to the other." Black's Law Dictionary 1123 (7th ed. 1999) (emphasis added). The Amended Order is not *ex parte* because Defendant was notified of the Motion filing, and it is clear that he is well aware of the situation in light of the numerous protest letters he has filed with this and other Courts. However, more than a week has passed since the filing deadline for a response and no formal objection or memorandum in opposition has been filed by Purdy.

Because the amendments to the July 23 Order proposed by Plaintiffs comport with this Court's original intention, Plaintiffs' Motion for Clarification [Doc. No. 17] is **GRANTED**, and the July 23 Order is **AMENDED** to read as follows (additions and changes in bold print):

Based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendants William S. Purdy, Sr., Please Don't Kill Your Baby, and Does 1-10, have registered with an Internet registrar the following Internet domain names: drinkcoke.org, mycoca-cola.com, mymcdonalds.com, mypepsi.org, pepsisays.com, my-washingtonpost.com,

washingtonpostsays.com, washingtonpost.cc, and washingtonpost.ws.

2. Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 113-14 (8th Cir. 1981) sets forth the four relevant factors: (1) the threat of irreparable harm to the moving party if an injunction is not granted, (2) the harm suffered by the moving party if injunctive relief is denied as compared to the effect on the non-moving party if the relief is granted, (3) the public interest, and (4) the probability that the moving party will succeed on the merits.

3. Defendants' actions have irreparably harmed Plaintiffs. Defendants have registered Internet domain names that incorporate the trademarks Coca-Cola®, Coke®, McDonalds®, McDonalds.com®, MyMcDonalds, Pepsi-Cola®, Pepsi®, The Washington Post®, WashingtonPost.com®, and MyWashingtonPost.com. The websites located at Defendants' registered domain names display content that does not originate from, is not sponsored by, and is not affiliated with the Plaintiffs, including color pictures that purport to be dismembered aborted fetuses and links to fund-raising appeals.

4. The irreparable harm suffered by Plaintiffs outweighs any potential harm Defendants may suffer from the issuance of this Order.

5. It is in the public interest to protect Plaintiffs' marks because Defendants' domain names are likely to confuse the public as to both the source and sponsorship of Defendants' websites, to divert Internet users from their intended online destinations, and to damage Plaintiffs' good names and goodwill.

6. It is probable that Plaintiffs will succeed on the merits. The cyberpiracy prevention section of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), prohibits use with a

bad faith intent to profit of a domain name that is identical or confusingly similar to a mark that is distinctive or famous at the time of defendant's registration of the domain name.

7. Plaintiffs' marks are both distinctive and famous, and the listed domain names are identical or confusingly similar to those marks.

8. Defendants have registered the domain names with a bad faith intent to profit from them by tarnishing and diluting Plaintiffs' marks, and by relying on Plaintiffs' good names and goodwill to achieve the personal gain of promoting their messages, generating publicity, and raising money for supported causes.

9. Defendants have failed to heed Plaintiffs' cease and desist demands, and indicate the intention to register "multitudes" of new domain names that are identical or similar to the Plaintiffs' marks. Purdy Decl. at 2.

10. Accordingly, Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order, are temporarily and preliminarily prohibited and enjoined from using the domain names drinkcoke.org, mycoca-cola.com, mymcdonalds.com, mypepsi.org, pepsisays.com, my-washingtonpost.com, washingtonpostsays.com, washingtonpost.cc, and washingtonpost.ws.

11. Defendants are also preliminarily enjoined from **registering or** using any domain name that both (1) incorporates, and is identical or confusingly similar to, Plaintiffs' distinctive, famous and protected marks Coca-Cola®, Coke®, McDonalds®, McDonalds.com®, Pepsi-Cola®, Pepsi®, The Washington Post®, and WashingtonPost.com®, and (2) does not alert the unwary Internet user to the protest or critical commentary nature of the attached website within the language of the domain name

itself.

12. This Order temporarily and preliminarily prohibits and enjoins all persons acting in concert with, or in the custody, care, and control of, Defendant William S. Purdy, Sr., including but not limited to all persons or entities listed as technical or administrative contacts **for any domain name encompassed by paragraphs 10 or 11 of this Order** (e.g., Mark A. Purdy II and William S. Purdy II).

13. Defendants are directed forthwith to advise all domain name registrars it has previously or currently employed of this Order and instruct them to take all actions necessary to stop the functioning of the identified domain names.

14. Defendants must also, within three days of this Order, transfer to the appropriate Plaintiff ownership of the identified domain names.

15. Defendants shall, within five days from the date of this Order, file a report with the Court and with a copy to the Plaintiffs, setting forth the manner in which it has complied with the terms of this Order.

16. Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 2] is **GRANTED**. This Order is effective upon the date recited below, and shall remain in effect until further Order of this Court, provided that, within 10 days of the date of this Order, Plaintiffs post a bond with the Clerk of this Court, pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, in the sum of \$5,000.

BY THE COURT:

Date: September 5, 2002.

ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE